

1. Definitions

- 1.1 "CIB" means Canterbury Insulated Builders Limited a NZ Limited Company its successors and assigns or any person acting on behalf of and with the authority of Canterbury Insulated Builders Limited.
- 1.2 "Client" means the person/s requesting CIB to provide the Goods and/or Services as specified in any invoice, document or order, and if there is more than one person requesting such is a reference to each person jointly and severally.
- 1.3 "Goods" means all goods, documents, designs, drawings, materials and products supplied to the Client by CIB.
- 1.4 "GST" means Goods and Services Tax payable in terms of the Goods and Services Tax Act 1985 and its amendments.
- 1.5 "Price" means the price payable for the Goods and/or Services as agreed between CIB and the Client in accordance with clause 5 of this contract.
- 1.6 "Services" means all Services supplied by CIB to the Client at the Client's request from time to time.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Goods and/or Services provided by CIB.
- 2.2 These terms and conditions may only be amended with CIB's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and CIB.

3. Authorised Representatives

- 3.1 Unless otherwise limited in accordance with clause 3.2 the Client agrees that should the Client introduce any third party to CIB as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Services on the Client's behalf and/or to request any variation to the Goods and/or Services on the Client's behalf (such authority to continue until all requested works have been completed or CIB receives a notice in writing from the Client that the said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise CIB in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to CIB for all additional costs incurred by CIB (including CIB's profit margin) in providing any Goods, works, materials, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give CIB not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone, email or fax number/s, or business practice). The Client shall be liable for any loss sustained by CIB as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At CIB's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by CIB to the Client; or
 - (b) CIB's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 CIB reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, safety considerations, change of design, obscured defects, asbestos, non compliant conditions, removal of soil, depth changes, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to CIB in the cost of labour or Services which are beyond CIB's control.
- 5.3 At CIB's sole discretion a non-refundable deposit may be required.
- 5.4 CIB may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
- 5.5 Time for payment for the Goods and/or Services being of the essence, the Price will be payable by the Client on the date/s determined by CIB which may be:
 - (a) on delivery of the Goods and/or Services;
 - (b) before delivery of the Goods and/or Services;
 - (c) by way of instalments/progress payments in accordance with CIB's payment schedule;
 - (d) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted or emailed to the Client.
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by CIB
- 5.6 Payment may be made by cash, electronic/on-line banking, EFTPOS, or by any other method as agreed to between the Client and CIB. If payment is made by credit card CIB may apply a surcharge.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to CIB an amount equal to any GST CIB must pay for any supply by CIB under this or any other agreement for providing CIB's Goods and/or Services. The Client must pay GST,

without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. The Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

- 5.8 Receipt by CIB of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured and cleared and until then CIB's ownership or rights in respect of the Goods and/or Services shall continue.

6. Delivery of Services

- 6.1 Subject to clause 6.2 it is CIB's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that CIB claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond CIB's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify CIB that the site is ready.
- 6.3 At CIB's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
- 6.4 At CIB's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.5 The Client must take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then CIB shall be entitled to charge a reasonable fee for redelivery of the Services.
- 6.6 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.7 CIB may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.8 Any time specified by CIB for delivery of the Services is an estimate only and CIB will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that CIB is unable to supply the Services as agreed solely due to any action or inaction of the Client then CIB shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

7. Risk

- 7.1 Any advice, recommendation, information, assistance or service provided by CIB in relation to the Goods and/or Services is given in good faith, is based on CIB's own knowledge and experience and shall be accepted without liability on the part of CIB and:
- (a) it shall be the responsibility of the Client to confirm the accuracy and reliability of the same having regard to the use to which the Client makes or intends to make of the Services; and
 - (b) if such advice or recommendations are not acted upon then CIB may require the Client or their agent to authorise commencement or recommencement of the Services in writing. CIB shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement or recommencement of the Services.
- 7.2 The Goods and/or Services are at the Clients risk when supplied (in part or in full) to the Clients nominated address.

8. Accuracy of Client's Plans and Measurements

- 8.1 CIB shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, CIB accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of the Incidental Items required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities before the Client or CIB places an order based on these measurements and quantities. CIB accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Access

- 9.1 Where applicable the Client shall ensure that CIB has clear and free access to the work site at all times to enable them to locate the Goods and/or undertake the Services and for all other lawful purposes. CIB shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of CIB's employees.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify CIB against all costs incurred by CIB in recovering such vehicles in the event they become bogged or otherwise immovable.

10. Underground Locations

- 10.1 Where applicable Prior to CIB commencing any work the Client must advise CIB of the precise location of all underground services on the site and clearly peg or mark out the same. The underground mains & services the Client must identify include; electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst CIB will take all care to avoid damage to any underground services the Client agrees to indemnify CIB in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and identified as required by clause 10.1.

11. Compliance with Laws

- 11.1 The Client and CIB shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

- 11.2 The Client shall obtain (at the expense of the Client) all licenses, approvals and consents that may be required for the Services.

- 11.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12. Title**
- 12.1 CIB and the Client agree that where it is intended that the ownership of Goods is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid CIB all amounts owing for the Goods and/or Services; and
 - (b) the Client has met all other obligations due by the Client to CIB in respect of all contracts between CIB and the Client.
- 12.2 Receipt by CIB of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured and received in cleared funds in CIB's bank account and until then CIB's ownership or rights in respect of the Incidental Items shall continue.
- 12.3 It is further agreed that:
- (a) the Client is only a bailee of the Goods and must return the Goods to CIB immediately upon request by CIB;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for CIB and must pay to CIB the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for CIB and must pay or deliver the proceeds to CIB on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of CIB and must dispose of or return the resulting product to CIB as CIB so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CIB.
 - (f) the Client irrevocably authorises CIB to enter any premises where CIB believes the Goods are kept and to recover possession of the Goods.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by CIB to the Client (if any) and all Goods that will be supplied in the future by CIB to the Client.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CIB may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse CIB for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of CIB.
- 13.3 CIB and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by CIB, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by CIB under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of CIB agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies CIB from and against all CIB's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CIB's rights under this clause.
- 14.3 The Client irrevocably appoints CIB and each director of CIB as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Client's Disclaimer**
- 15.1 The Client hereby disclaims any right to rescind or cancel any contract with CIB or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by CIB and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.
- 16. Error and Omissions**
- 16.1 The Client shall inspect the Goods and/or Services on delivery and shall within twenty-four (24) hours of delivery notify CIB of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford CIB an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Client believes the Goods and/or Services are defective in any way. If the Client shall fail to comply with these provisions, the Goods and/or Services shall be conclusively deemed to be in accordance with the terms and conditions and free from any defect or damage.
- 16.2 For defective Services, which CIB has agreed in writing that the Client is entitled to reject, CIB's liability is limited to either (at CIB's discretion) replacing the Goods and/or Services or rectifying the Goods and/or Services provided that the Client has complied with the provisions of clause 16.1.

17. Warranty

- 17.1 Subject to the conditions of warranty set out in clauses 17.3 and 17.3 CIB warrants that if any defect in any workmanship of CIB becomes apparent and is reported to CIB within twelve (12) months of the date of delivery (time being of the essence) then CIB will either (at CIB's sole discretion) replace or remedy the workmanship. CIB reserves the right of first refusal to rectify any defect prior to the Client consulting with a third party to rectify or repair.
- 17.2 For goods not manufactured by CIB the warranty will be the current warranty provided by the manufacturer of the goods or materials. CIB will be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 17.3 The conditions applicable to the warranty given by clause 17.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Services; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by CIB; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Incidental Items after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and CIB shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without CIB's consent.
 - (c) in respect of all claims CIB shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

18. Consumer Guarantees Act 1993

- 18.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by CIB to the Client.

19. Intellectual Property

- 19.1 Where CIB has designed, drawn or developed Goods for the Client, then the copyright in any Incidental Items shall remain the property of CIB.
- 19.2 The Client warrants that all designs, specifications or instructions given to CIB will not cause CIB to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CIB against any action taken by a third party against CIB in respect of any such infringement.
- 19.3 The Client agrees that CIB may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which CIB has created for the Client.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CIB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes CIB any money the Client shall indemnify CIB from and against all costs and disbursements incurred by CIB in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CIB's collection agency costs, and bank dishonour fees).
- 20.3 Without prejudice to any other remedies CIB may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CIB may suspend or terminate the supply of Services to the Client. CIB will not be liable to the Client for any loss or damage the Client suffers because CIB has exercised its rights under this clause.
- 20.4 Without prejudice to CIB's other remedies at law CIB shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CIB shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CIB becomes overdue, or in CIB's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1 CIB may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice CIB shall repay to the Client any money paid by the Client for the Services. CIB shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by CIB as a direct result of the cancellation (including, but not limited to, any loss of profits).

22. Privacy Act 1993

- 22.1 The Client authorises CIB or CIB's agent to:
- (a) access, collect, retain, disclose and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.

- (b) disclose information about the Client, whether collected by CIB from the Client directly or obtained by CIB from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Client shall have the right to request CIB for a copy of the information about the Client retained by CIB and the right to request CIB to correct any incorrect information about the Client held by CIB.

23. Construction Contract Act 2002

- 23.1 The Client hereby expressly acknowledges that:
- (a) CIB has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
- (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to CIB by a particular date; and
 - (iv) CIB has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if CIB suspends work, it:
- (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if CIB exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to CIB under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of CIB suspending work under this provision.

24. Liability

- 24.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Contract and Commercial Law Act 2017 and other statutes may imply warranties or conditions or impose obligations upon CIB which cannot by law (or which can only to a limited extent by law) be excluded or modified in respect of any such warranties conditions or terms imposed on CIB. CIB's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 24.2 Except as otherwise provided by clause 24.1 or 24.3 CIB shall not be liable for:
- (a) Any loss or damage whatsoever arising from the supply of Services (or delay in supplying or failure to supply) by CIB to the Client including consequential loss whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by the CIB to the Client; and
 - (b) The Client shall indemnify CIB against all claims and loss of any kind arising from the negligence or wilful acts or omissions of the Client.
 - (c) Nothing in this clause 24 excludes the CIB's liability for the negligent or wilful acts or omissions of CIB.
 - (d) The total liability of CIB hereunder will in no case exceed the Price of the Services.

25. General

- 25.1 The failure by CIB to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CIB's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 25.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CIB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.4 CIB may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.5 The Client agrees that CIB may amend these terms and conditions at any time. If CIB makes a change to these terms and conditions, then that change will take effect from the date on which CIB notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for CIB to provide Goods and/or Services to the Client.
- 25.6 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.